

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

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4
5 **In the Matter of:**

6 **Housing and Community Development**
7 **Corporation of Hawaii, a public corporation**
8 **of the State of Hawaii,**

9 **Respondent.**

Docket No. UIC-AO-2005-0011

**CONSENT AGREEMENT
AND FINAL ORDER**

10 **Proceedings under Section 1423(c) of the**
11 **Safe Drinking Water Act, 42 U.S.C. §**
12 **300h-2(c)**

13 **I. AUTHORITY**

14 This Consent Agreement and Final Order (“CA/FO”) is issued under the authorities vested in
15 the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections
16 1423(c) and 1445(a) of the Safe Drinking Water Act (the “SDWA” or the “Act”), 42 U.S.C. §§
17 300h-2(c), 300j-4(a). The Administrator has delegated these authorities to the Regional
18 Administrator of EPA Region IX. The Regional Administrator in turn has delegated these
19 authorities to the Director of the Water Division, EPA Region IX. In accordance with these
20 authorities, the Director of the Water Division hereby issues, and the Housing and Community
21 Development Corporation of Hawaii (“Respondent”) hereby agrees, to the issuance of this CA/FO

22 **II. FINDINGS OF VIOLATION**

23 1. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h-300h-8, EPA has promulgated regulations
24 establishing minimum requirements for Underground Injection Control (UIC) programs to prevent
25 underground injection which endangers drinking water sources. These regulations are set forth at 40
26 C.F.R. Part 144.

1 2. "Underground injection" means the subsurface emplacement of fluids by well injection. 42
2 U.S.C. § 300h(d)(1), 40 C.F.R. § 144.3.

3 3. Pursuant to 40 C.F.R. § 144.88, existing large capacity cesspools are required to be closed no
4 later than April 5, 2005. "Large capacity cesspools" include "multiple dwelling, community or
5 regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which
6 have an open bottom and sometimes perforated sides." 40 C.F.R. § 144.81(2). Large capacity
7 cesspools do not include single family residential cesspools or a non-residential cesspools which
8 receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.* A
9 "cesspool," is a "drywell," which in turn is a "well," as those terms are defined in 40 C.F.R. § 144.3.

10 4. Pursuant to Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), and 40 C.F.R. Part 147
11 Subpart M, § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program
12 consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

13 5. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), EPA may issue an
14 administrative compliance order to any person who violates any requirement of an applicable UIC
15 program. 42 U.S.C. § 300h-2(c)(1).

16 6. Pursuant to Section 1445(a)(1)(A) of the Act, 42 U.S.C. § 300j-4(a), EPA may require any
17 person who is subject to the requirements of the Act to submit information relating to such person's
18 compliance with the requirements of the Act. 42 U.S.C. § 300j-4(a)(1)(A).

19 7. Respondent Housing and Community Development Corporation of Hawaii (HCDCH) is
20 a public corporation organized under the laws of the State of Hawaii. Thus, Respondent is a
21 "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40
22 C.F.R. § 144.3.

23 8. Pursuant to Chapter 201G, Hawaii Revised Statutes, Respondent owns or holds real
24 property on the islands of Hawaii, Kauai, and Maui that it leases and manages as public housing.

1 9. Respondent operates two-hundred and thirty (230) large capacity cesspools that service its
2 public housing units located on the islands of Hawaii, Kauai, and Maui. The large capacity
3 cesspools operated by Respondent are referenced in the **Timeline and Group Designation** attached
4 hereto and incorporated by reference, and more specifically described in the **Cesspool Inventory**
5 attached to the aforementioned **Timeline and Group Designation**.

6 10. Respondent has informed EPA that due to the number of large capacity cesspools to be
7 closed, Respondent will be unable to complete the closures by April 5, 2005 as required by 40 C.F.R.
8 § 144.88.

9 11. Respondent intends to undertake the measures referred to in Paragraphs **14** and **16** by the
10 dates specified in order to close the large capacity cesspools.

11 12. Based on all the foregoing, Respondent has violated the requirement that all large capacity
12 cesspools be closed by April 5, 2005, and is therefore in violation of 40 C.F.R. § 144.88.

13 **III. PROPOSED ORDER**

14 Respondent, by and through its attorneys, the State Attorney General, and EPA agree to the issuance
15 of the following, which, upon issuance of the Final Order, shall become effective:

16 **A. COMPLIANCE REQUIREMENTS**

17 **1. GROUP 1 CESSPOOLS**

18 13. Respondent shall close one hundred and twenty-seven (127) of the large capacity cesspools
19 referred to and identified as Group 1 in the attached **Timeline and Group Designation** in
20 accordance with 40 C.F.R. §144.89(a) no later than **June 30, 2011**.

21 14. Respondent shall submit reports (“milestone reports”) confirming that the milestones set
22 forth in this paragraph have been met in accordance with the schedule below:

23 a. By **March 31, 2006**, Respondent shall complete the design of the alternative
24 treatment technology. If the alternative treatment system is a septic tank system, an effluent filter is
25 required prior to disposal into the leach field or seepage pit.

- 1 b. By **October 1, 2008**, Respondent shall begin the bid process for construction.
- 2 c. By **April 1, 2009**, Respondent shall have obtained an Approval to Construct issued
3 by the Hawaii State Department of Health.
- 4 d. By **April 1, 2009**, Respondent shall initiate construction of the alternative treatment
5 technology designed pursuant to subparagraph (a) above.
- 6 e. By **November 30, 2009**, Respondent shall have arranged a final inspection of the
7 alternative treatment system by the Hawaii State Department of Health.
- 8 f. By **March 1, 2011**, Respondent shall have obtained an Approval to Use issued by the
9 Hawaii State Department of Health.
- 10 g. By **March 1, 2011**, Respondent shall complete the closure of the cesspools identified
11 as Group 1 in the attached **Timeline and Group Designation** in the manner required by EPA, the
12 Hawaii State Department of Health, and applicable regulations at 40 C.F.R. Part 144 *et seq.*
- 13 h. By **June 1, 2011**, Respondent shall provide a copy of an Engineering Report to the
14 EPA in the manner specified in Paragraph 17. The Engineering Report should summarize the
15 actions taken to achieve the milestones contained in this subparagraph. At a minimum, the
16 Engineering Report shall describe and document for each cesspool: the design (including flows) of
17 the alternative wastewater system installed as a replacement; what was actually installed, and how
18 and when the cesspool was converted or closed. In addition it should provide the actual dates for
19 accomplishment or achievement of the milestones listed in subparagraphs (a) through (h) of this
20 paragraph. Where there are permits issued, the Engineering Report should list the permit numbers.

21 **2. GROUP 2 CESSPOOLS**

22 15. Respondent shall close one hundred and three (103) of the large capacity cesspools
23 referred to and identified as Group 2 in the attached **Timeline and Group Designation** in
24 accordance with 40 C.F.R. §144.89(a) no later than twelve (12) months after connection to the
25 County of Hawaii's Queen Liliuokalani Subdivision Sewer System/Kealakehe Sewer Extension
26 (County Sewer), and in any case no later than **March 1, 2009**.

1 16. Respondent shall submit milestone reports confirming that the milestones set forth in this
2 paragraph have been met in accordance with the schedule below:

3 a. By **September 31, 2006**, Respondent shall complete cesspool closure designs and the
4 design of the infrastructure necessary to integrate into the County Sewer.

5 b. By **October 1, 2006**, Respondent shall begin the bid process for construction.

6 c. By **October 30, 2006**, Respondent shall submit to EPA a timeline reflecting the time
7 necessary for Respondent to accomplish all Group 2 cesspools closures after integration into the
8 County Sewer is completed. This timeline shall at a minimum include milestones for obtaining all
9 necessary Hawaii State Department of Health authorizations, including Approval to Construct and
10 Approval to Use. Any amendment or revision to the study must be approved in writing by EPA.

11 d. By **March 1, 2007**, Respondent shall initiate construction of the sewer infrastructure
12 designed pursuant to subparagraph (a) above.

13 e. By **February 28, 2008**, Respondent shall have completed construction of its sewer
14 infrastructure up to the point of connection with the County Sewer and shall have successfully
15 connected into the County Sewer unless the County Sewer is not available for connection to
16 Respondent's sewer system.

17 f. Respondent will complete connection to the County Sewer within 120 days of notice
18 of availability/readiness from the County.

19 g. Respondent shall complete the closure of the Group 2 cesspools identified in the
20 attached **Timeline and Group Designation** in the manner required by EPA, the Hawaii State
21 Department of Health, and applicable regulations at 40 C.F.R. Part 144 *et seq.*, within twelve (12)
22 months of connection to the County Sewer.

23 h. By **June 1, 2009**, Respondent shall provide a copy of an Engineering Report to the
24 EPA in the manner specified in Paragraph 17. The Engineering Report should summarize the
25 actions taken to achieve the milestones contained in this subparagraph. At a minimum, the
26 Engineering Report shall describe and document for each cesspool: the design (including flows) of
27

1 the alternative wastewater system installed as a replacement; what was actually installed, and how
2 and when the cesspool was converted or closed. In addition it should provide the actual dates for
3 accomplishment or achievement of the milestones listed in subparagraphs (a) through (h) of this
4 paragraph. Where there are permits issued, the Engineering Report should list the permit numbers
5 (e.g., UIC permit numbers). Amendments or revisions to the study must be approved in writing by
6 EPA.

7 17. All submittals made pursuant to this CA/FO shall be mailed to EPA Region IX's Large
8 Capacity Cesspool (LCC) Project Coordinators at:

9 LCC Project Coordinator
10 Ground Water Office (WTR-9)
11 Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

12 18. All reports submitted to EPA Region IX pursuant to this CA/FO must be signed by a duly
13 authorized representative of Respondent, and shall include the following statement:

14 CERTIFICATION: "I certify under penalty of law that this document and all attachments
15 were prepared by direct supervision or in accordance with a system designed to assure that
16 qualified personnel properly gather and evaluate the information submitted. Based on my
17 inquiry of the person or persons who manage the system, or those persons directly
18 responsible for gathering the information, I certify that the information submitted is, to the
best of my knowledge and belief, true, accurate, and complete. I am aware that there are
significant penalties for submitting false information, including the possibility of fine and
imprisonment for knowing violations." [signature].

19 **B. GENERAL REQUIREMENTS AND PROVISIONS**

20 19. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the
21 Consent Agreement and agrees not to contest, in any administrative or judicial forum, EPA's
22 jurisdiction to enter into this CA/FO.

23 20. Respondent neither admits nor denies the factual allegations contained in this Consent
24 Agreement.

1 21. The provisions of this CA/FO shall be binding upon Respondent and its employees and
2 contractors. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
3 acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform
4 its obligations under this CA/FO.

5 22. Respondent shall give notice, and provide a copy of this CA/FO, to any successor-in-interest
6 prior to transfer of ownership or operation of the large capacity cesspools referred to in Paragraph 9
7 and the attached **Timeline and Group Designation**. Such transfer, however, shall have no effect on
8 Respondent's obligation to comply with this CA/FO. Respondent shall notify EPA in writing at least
9 thirty (30) days prior to any such transfer of ownership or operation of the large capacity cesspools
10 referred to in Paragraph 9 and further described in the attached Timeline and Group Designation.

11 23. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and
12 fully authorized to enter into and ratify this Consent Agreement.

13 24. Respondent consents to the issuance of this CA/FO and the conditions specified herein.

14 25. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C.
15 § 300h-2(c)(3), or to otherwise contest the allegations contained in the Consent Agreement, or to
16 appeal the CA/FO.

17 26. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of
18 any federal, state, or local statute, regulation, or condition of any permit issued thereunder, including
19 the requirements of the Act and accompanying regulations.

20 27. Issuance of or compliance with this CA/FO does not waive, extinguish, satisfy, or otherwise
21 affect Respondent's obligation to comply with all applicable requirements of the Act, regulations
22 promulgated thereunder, and any order or permit issued thereunder.

23 28. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO.
24 Violation of this CA/FO shall be deemed a violation of the Act.

25 29. Each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.
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1 30. If any event occurs which causes or may cause delays in either: 1) submission of milestone
2 reports required under **Section III.A** of this Consent Agreement or 2) reaching any of the deadlines
3 set forth in **Section III.A.** of this Consent Agreement, Respondent shall, within 7 business days of
4 the delay or within 7 business days of Respondent's knowledge of the anticipated delay, whichever is
5 earlier, notify by telephone the EPA Region IX LCC Project Coordinators or, in their absence, the
6 Manager of the EPA Region IX Ground Water Office. Within fifteen (15) business days thereafter,
7 Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay,
8 the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those
9 measures will be implemented. Respondent shall exercise its best efforts to avoid or minimize any
10 delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph
11 shall preclude Respondent from asserting any claim of *force majeure*.

12 31. If EPA agrees that the delay or anticipated delay in compliance with this CA/FO has been or
13 will be caused by circumstances entirely beyond the control of Respondent, the time for performance
14 may be extended. EPA may consult with Respondent to determine the amount of time for the
15 extension. In such event, EPA shall grant, in writing signed by the Manager of the EPA Region IX
16 Ground Water Office, the extension of time. To the extent that the *force majeure* incident impacts
17 subsequent milestones, EPA and Respondent may consult to determine whether other changes to the
18 compliance schedule are warranted.

19 32. In the event that EPA does not agree that a delay in achieving compliance with the
20 requirements of this CA/FO has been or will be caused by circumstances beyond the control of the
21 Respondent, EPA will notify Respondent in writing of its decision and any delays will not be
22 excused.

23 33. Respondent shall have the burden of demonstrating, by a preponderance of the evidence, that
24 the actual or anticipated delay has been or will be caused by a *force majeure* event, that the duration
25 of the delay was or will be warranted under the circumstances, that Respondent did exercise or is
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1 using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied
2 with the requirements of this section.

3 34. All milestone reports required under **Section III.A** of this Consent Agreement and any
4 requests for extension of time required to be submitted to EPA pursuant to this Consent Agreement
5 shall be sent to the following address:

6 LCC Project Coordinators
7 Ground Water Office (WTR-9)
8 Environmental Protection Agency
9 75 Hawthorne Street
10 San Francisco, CA 94105

11 Any correspondence sent by EPA to Respondent regarding this Consent Agreement and Final Order
12 shall be sent to:

13 Attorney General
14 State of Hawaii
15 Housing Division
16 465 South King Street, Ste. B2
17 Honolulu, HI 96813

18 35. Telephone inquiries to EPA should be made to the LCC Project Coordinators at (415) 972-
19 3542.

20 36. The provisions of this CA/FO shall be severable. If any provision of this CA/FO is found to
21 be unenforceable, the remaining provisions of this CA/FO shall remain in full force and effect.

22 **C. DISPUTE RESOLUTION**

23 37. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve
24 disputes arising under or with respect to this CA/FO.

25 38. If Respondent disagrees, in whole or in part, with any decision by EPA under this CA/FO,
26 Respondent's Project Coordinator shall orally notify EPA's LCC Project Coordinators of the dispute
27 ("Project Coordinators"). The Project Coordinators shall use their best efforts to informally and in
28 good faith resolve all disputes or difference of opinion relating to this CA/FO. The period for
informal negotiations shall not exceed ten (10) business days from the time the dispute arises, unless
it is modified by written agreement of the parties.

1 39. In the event that the Project Coordinators cannot resolve a dispute by informal negotiations
2 under the preceding paragraph, Respondent may pursue the matter by submitting its objection to
3 EPA in writing. Respondent must send its written objections to EPA within twenty (20) business
4 days from the time the dispute referred to in the previous paragraph arises. Respondent's written
5 objections must set forth the specific points of the dispute, the basis for Respondent's position and
6 any matters which it considers necessary for EPA's determination. If Respondent does not invoke
7 formal dispute resolution within twenty (20) business days date the dispute arises, EPA's decision
8 shall be binding on Respondent.

9 40. EPA and Respondent shall have ten (10) business days from receipt of Respondent's written
10 objections to attempt to resolve the dispute through formal discussions. During such time, if
11 Respondent so requests, the Associate Director for EPA's Region IX Water Division, will meet with
12 Respondent in person to discuss the dispute either by telephone or at EPA's offices in San Francisco,
13 unless another location is mutually agreed upon.

14 41. Within twenty (20) business days of EPA's receipt of Respondent's written objections, EPA,
15 through its Associate Director, Water Division, will provide to Respondent in writing EPA's
16 decision on the pending dispute.

17 42. If the Respondent disagrees with the written decision, the Respondent may, within ten (10)
18 business days of receipt of the written decision, appeal to the Director, Region IX Water Division.
19 Respondent's appeal must set forth the specific points of the dispute, the basis for Respondent's
20 position and any matters which it considers necessary for EPA's determination. During such time, if
21 Respondent so requests, the Director, Water Division, will meet with Respondent in person to
22 discuss the dispute either by telephone or at EPA's offices in San Francisco unless another location
23 is mutually agreed upon.

24 43. The Parties may, by mutual written agreement, extend any of the time periods provided for in
25 the dispute resolution process.

1 44. EPA and Respondent have agreed to the foregoing dispute resolution procedures solely for
2 the purposes, and based on the unique circumstances, of this CA/FO.

3 **D. EFFECTIVE DATE**

4 45. The effective date of the CA/FO shall be the date that the Final Order is signed.

5
6 FOR THE CONSENTING PARTIES:

7 For the Housing and Community Development Corporation of Hawaii:

8
9 _____ Date: _____

10 Stephanie Aveiro
11 Executive Director
12 Housing and Community Development Corporation of Hawaii

13 Approved as to form:

14 _____

15 Deputy Attorney General
16 State of Hawaii

17 For the United States Environmental Protection Agency:

18
19 _____ Date: _____

20 Alexis Strauss
21 Director, Water Division
22 U.S. Environmental Protection Agency
23 75 Hawthorne Street
24 San Francisco, CA 94105

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

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6 **In the Matter of:**

Docket No. UIC-AO-2005-0011

7 **Housing and Community Development**
8 **Corporation of Hawaii, a public corporation**
9 **of the State of Hawaii,**

FINAL ORDER

10 **Respondent.**

Proceedings under Section 1423(c) of the
Safe Drinking Water Act, 42 U.S.C. §
300h-2(c)

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12
13 The United States Environmental Protection Agency Region IX (“EPA”), and the Housing and
14 Community Development Corporation of Hawaii (“Respondent”), having entered into the foregoing
15 Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and
16 Proposed Order regarding the matters alleged therein,

17 **IT IS HEREBY ORDERED THAT:**

18 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-AO-2005-0011) be
19 entered; and

20 2. Respondent, HCDCH, shall comply with the requirements set forth in the Consent
21 Agreement and Proposed Order, which shall become final and effective on the date it is signed
22 below.

23
24
25 Date: _____

25 _____
26 Alexis Strauss
27 Director, Water Division
28 U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

CONSENT AGREEMENT and
FINAL ORDER
In Re: Housing and Community Development
Corporation of Hawaii

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EPA R9 - Office of Regional Counsel
Attn: Rich Campbell
75 Hawthorne Street (ORC -2)
San Francisco, California 94105